

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES,

Plaintiff,

v.

REGINALD PURNELL,

Defendant.

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Case No. 2:05-cr-192

JUDGE SARAH D. MORRISON

OPINION & ORDER

Defendant Reginald Purnell's November 27, 2019 "Electronic Monitor Request" (ECF No. 187), which the Court construes to be a motion ("Motion") for release pending appeal under 18 U.S.C.S. § 3143(b)¹, is currently before the Court.

The Court's November 20, 2019 Opinion & Order (ECF No. 184) aptly summarizes the history of the case and is incorporated herein by reference. At present, Defendant is in prison and has appealed (ECF No. 185) the Court's November 18, 2019 Judgment (ECF No. 182) finding him in violation of his supervised release and sentencing him to eighteen months in prison. His Motion seeks immediate release from prison with electronic monitoring due to his wife's health and economic concerns. (ECF No. 187.)

Section 3143(b) provides:

- (b) Release or detention pending appeal by the defendant.
- (1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal

¹ "The Court will note that it has jurisdiction to entertain the present motion, even though Defendant has already filed an appeal, because the statute under which Defendant is claiming relief, 18 U.S.C. § 3143(b), confers limited jurisdiction upon district courts to decide this issue." *United States v. Smith*, 595 F. Supp. 2d 953, 956 n.1 (S.D. Iowa 2009).

or a petition for a writ of certiorari, be detained, unless the judicial officer finds—

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title [18 USCS § 3142(b) or (c)]; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—

(i) reversal,

(ii) an order for a new trial,

(iii) a sentence that does not include a term of imprisonment, or

(iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

If the judicial officer makes such findings, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c) of this title [18 USCS § 3142(b) or (c)], except that in the circumstance described in subparagraph (B)(iv) of this paragraph, the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence.

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 [18 USCS § 3142] and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained.

Consequently, in order for the Court to order Defendant released pending his appeal, Defendant must show both that: “(A) by clear and convincing evidence that [he] is unlikely to flee or pose a danger to others, and (B) that his appeal ‘raises a substantial question of law or fact’ that is likely to result in reversal, new trial, or reduction to a sentence that would be served before disposition of the appeal.” *United States v. Smith*, 595 F. Supp. 2d 953, 957 (S.D. Iowa 2009) (citation omitted).

The Court initially turns to the second aspect of the analysis, as that prong proves dispositive. Defendant’s motion provides no argument or authority as to why or how “his appeal ‘raises a substantial question of law or fact’ that is likely to result in reversal, new trial, or reduction to a sentence that would be served before disposition of the appeal.” *Id.* As Defendant

must prove both prongs in order to secure release, the Court **DENIES** Defendant's Electronic Monitor Request (ECF No. 187).

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE